REMARKS/ARGUMENTS

I. Claim Amendments

Claims 3, 17 and 22 are amended herein to more clearly define the actuator as comprising a cable.

Claim 33 is amended herein to clarify that the cable-portion of the actuator passes through the open channel of the pivot mount.

New claims 73-76 indicate that the actuator further comprises a handle coupled to the cable or cable portions.

II. Rejection of Claims 22-63 under 35 U.S.C. § 112 ¶ 2

In the August 6, 2003 Office action, claims 22-63 are rejected under 35 U.S.C. § 112 ¶ 2 as being indefinite for failing to point out and distinctly claim the subject matter which the Applicant regards as the invention. The salient issue is the apparent confusion in whether the actuator and cable are one in the same element, as previously suggested in original claim 3, or if the actuator and cable are separate elements.

Claims 3, 17 and 22, as herein amended, define an actuator comprising a cable. As is commonly used in U.S. patent practice, the term "comprising" is open-ended. As such, the amendment to claims 3, 17, and 22 clarify that the "actuator" may include a cable, but is not limited to a cable or the same as a cable. Note, the independent claims merely include an "actuator". Additionally, new claims 73-76 further clarify that the actuator may include a handle coupled to the cable. In light of claims 75 and 76, claims 40 and 51 more clearly define the actuator as a handle coupled to the end portions of the cable from the cable/pulley system.

Moreover, as originally presented in claim 4, the "cable" may include a cord, but is not necessarily limited to a cord. These claims and the use of them are consistent with the specification, which states "[t]he cable used in the cable/pulley system is preferably a 4.3-4.6 mm diameter, polyester-core, nylon-sheath black cord with a medium stiffness braid and having 1% elongation over 100 pounds of load. Other types of rope, cord, or coated steel cable would also be acceptable." Present Application, *p. 20, lines 15-18.*

In accordance with the discussion set forth above, it is believed that the amended claims 3, 17, and 22 point out and distinctly claim the subject matter of the invention in accordance with 35 U.S.C. § 112 ¶ 2.

Independent claim 22 is rewritten to overcome the rejection under 35 U.S.C. § 112 ¶ 2 for the reasons discussed above. As rewritten, claim 22 is in proper form under 35 U.S.C. § 112 ¶ 2, and in form for allowance and such indication is respectfully requested. Claims 23-39 depend from and include all of the limitations of claim 22. Thus, for at least the same reasons discussed above with regard to claim 22, it is believed that claims 23-39 are in form for allowance and such indication is respectfully requested.

Additionally, for the reasons recited above, it is respectfully submitted that a cable may be a separate element from an actuator. For example, the cable may be connected with the actuator as set forth in claims 40-63, with claims 40 and 51 being independent, and claims 41-50 and 52-63 dependent therefrom. Thus, it is believed that claims 40-63 as originally submitted, are in proper form under 35 U.S.C. § 112, ¶ 2. New claims 75 and 76 are added to further clarify that the actuator recited in independent claims 40 and 51, respectively, may comprise a handle coupled to the cable.

III. Rejection of Claims 1-4 and 21 under 35 U.S.C. § 102(b)

In the Office action, claims 1-4 and 21 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 4,944,511 to Francis (herein "Francis").

A. Claims 1-4

An anticipation rejection under 35 U.S.C. § 102(b) requires that the cited prior art reference disclose each and every limitation of a claim. It is respectfully submitted that Francis does not anticipate claim 1 as originally submitted and also teaches away from the technology of the present invention. Claim 1 defines an exercise unit comprising a resistance engine that provides a constant load to a user when an actuator is actuated. In contrast, the resistive spring packs of the Francis device do not provide a constant load to oppose the force applied by a user because "[a]s the cords 56 progressively unwind, the springs 114 (and 144) are under increasing stress and thus provide increased resistance with increased extension of the cords." Francis Patent, *col. 8, lines 6-9.*

For the Examiner's reference, in one particular embodiment, the exercise unit of the present invention provides a constant load by coupling a spiral pulley to the resistance engine. The spiral pulley, in effect, offsets the increasing load of the resistance engine. See Present Application, *p. 14, lines 2-9*. Thus, unlike the increasing resistive load in Francis, the present invention provides a constant load.

Thus, it is respectfully believed that, for at least the reasons discussed above, the Francis patent does not anticipate claim 1 as originally submitted. As such, claim 1 is patentable under 35 U.S.C. § 102(b) over Francis, and in form for allowance and such indication is respectfully requested. Claims 2-4 depend from and include all of the limitations of claim 1. Thus, for at least the same reasons discussed above with regard to claim 1, it is believed that claims 2-4 are in form for allowance and such indication is respectfully requested.

B. Claim 21

In accordance with 35 U.S.C. § 102(b), it is respectfully submitted that Francis does not anticipate claim 21 as originally submitted. Claim 21 defines a bench exercise unit comprising a seat positioned on a frame. As such, a user performing an exercise on the bench exercise unit either sits or lays on the seat. In contrast, Francis teaches an exercise device comprising a pair of laterally positioned foot pads so that a user can stand on the device while exercising. The Francis device provides no seat for a user to sit or lay while exercising. Additionally, Francis suggests the capability of an alternative rowing exercise. However, the rowing capability of the Francis device provides no seat and requires a user to sit on the floor while performing the rowing exercise. See Francis, *col. 9, lines 13-16.*

Thus, it is respectfully believed that, for at least the reasons discussed above, the Francis patent does not anticipate claim 21 as originally submitted. As such, claim 21 is patentable under 35 U.S.C. § 102(b) over Francis, and in form for allowance and such indication is respectfully requested.

IV. Indication of Allowable Subject Matter

The Examiner is thanked for his indication that claims 5-20 and 64-72 contain allowable subject matter. At this time, claims 5-20 and 64-72 have not been amended to include the limitations of the base claims. Claims 5-12 depend from and include all of the limitations of

claim 1 which is believed to be in form for allowance for the reasons discussed above in Section III(A). Thus, it is believed that claims 5-12 are also in form for allowance, and such indication is respectfully requested. The Applicants reserve the right to rewrite claims 5-12 in independent form in a subsequent Amendment.

Additionally, independent claims 13 and 64 were not addressed in this Office action. Claims 14-20 and 65-72 depend from and include all of the limitations of claims 13 and 64, respectively. Accordingly, action on the merits or further explanation with regard to claims 13 and 64 is requested. It should be noted that claim 13 is similar in scope to claim 21 (addressed above) and claim 64 is similar in scope to claim 1 (addressed above). Further, it is believed that claims 13 and 64 are patentable over Francis for at least the same reasons as recited above with regard to claims 21 and 1, respectively.

V. Conclusion

For at least the various reasons discussed herein, it is believed that all pending claims 1-76 are in form for allowance, and such indication is respectfully requested.

A petition for a three month extension of time to respond to the August 6, 2003 Office Action is hereby requested. A check is enclosed in the amount of $1,022.00 to cover the three month extension of time and additional claim fees. No other fees are believed to be due with this Amendment and Response; however, if any application processing fees are required, the Examiner is hereby authorized to charge deposit account number 04-1415.

Respectfully submitted,

Date: January 28, 2004

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